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Supreme Court, U.S.
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No. 00-1318

In The

Supreme Court of the United States

LOCAL 134 IBEW and MICHAEL FITZGERALD,
Petitioners.

v.

CHARLES CHATHAS, ED MCQUIRE,
JIM HASTINGS, BERNIE HICKEY, JR.
and BOB PITLOCK,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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13 pp

TABLE OF CONTENTS

	Page
TABLE OF CITED AUTHORITIES	ii
THE SUPREME COURT SHOULD GRANT THE PETITION FOR WRIT OF CERTIORARI	1
I. Response to Respondents' Statement of Facts	1
II. The Conflict Between the Circuits is Recognized by the Federal Appellate Courts	2
III. The Seventh Circuit Erred in Expanding the Scope of §501	7
CONCLUSION	10

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

Coleman v. Brotherhood of Railway & Steamship Clerks, 340 F.2d 206 (2d Cir. 1965) 6

Gee v. Textile Processors, Service Trades, Health Care, Professional and Technical Employees International Union, No. 99 C 3577, 2000 WL 336559 3

Gurton v. Arons, 339 F.2d 371 (2d Cir. 1964) 6,9

Head v. Brotherhood of Railway, Airline & Steamship Clerks, 512 F.2d 198 (7th Cir. 1975) 7

Morrisey v. Curran, 650 F.2d 1267 (2d Cir. 1981) 7

Operative Plasterers' & Cement Masons' International Association of the United States and Canada, AFL-CIO v. Benjamin, 843 F.Supp. 1267 (N.D. Ind. 1993) 4,5,7

Richardson v. National Post Office Mail Handlers, 442 F.Supp. 193 (E.D. Va. 1977) 5

Stelling v. IBEW Local 1547, 587 F.2d 1379 (9th Cir. 1978) 5

Trustees of the Operative Plasterers' and Cement Masons' Local Union Officers and Employees Pension Fund v. Journeyman Plasterers' Protective and Benevolent Society, Local Union No. 5, 794 F.2d 1217 (7th Cir. 1986) 3,4,7

Yanity v. Benware, 376 F.2d 197 (2d Cir. 1967).. 6

THE SUPREME COURT SHOULD GRANT THE PETITION FOR WRIT OF CERTIORARI

I. Response to Respondents' Statement of Facts

Petitioners filed their Petition for Writ of Certiorari requesting this Honorable Court to resolve the conflict between the circuits as to the scope of conduct governed by §501 of the LMRDA. (29 U.S.C. §501). Some courts have limited the scope of this section to cases involving union funds or property, while other courts have applied a broader interpretation encompassing the conduct or decisions of union officers. However, until the Seventh Circuit's decision in this case, no court has interpreted §501 so broadly as to include conduct by a social club's members selling tickets and ads to a Valentine's Day dance for the club's members, conduct which was wholly unrelated to union funds, union property, union decisions, or union conduct. Contrary to the factual situation portrayed by Respondents, this case simply entails the sale of tickets and ads to a dance that is held each year for the members of one of the many social clubs comprised of I.B.E.W. Local 134 members.[1]

In their Brief in Opposition, Respondents claim that there is no conflict between the circuits and that the Seventh Circuit's decision was correct. Respondents also provided a lengthy recitation of their view of the relevant facts. Although Respondents' factual statement is not

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[1]Social clubs have a long history in Local 134. They have been the vehicle for various ethnically, culturally and ideologically similar electricians to gather in a social setting. The social clubs have also functioned as political groups supporting candidates for union office. These groups do not function within the Constitution or by-laws of the I.B.E.W. or Local 134 and have no official capacity or standing in the union organization.

entirely accurate, Petitioners will not correct or answer all of the opposition's "facts" but will focus on the primary issue–shall the Supreme Court resolve the conflict between the circuits' decisions interpreting the application of §501?

II. The Conflict Between the Circuits is Recognized by the Federal Appellate Courts

Respondents argue in their Brief that there is no conflict between the circuits on the issue presented by this Petition. They state:

> [i]n none of the cases cited by Petitioner did any other court address the question of whether a union officer's solicitation and/or receipt of money, from an employer with which the union officer has dealings, on behalf of a social/political organization the officer controls, constitutes a violation of Section 501. (Brief in Opposition, p. 1.)

Respondents attempt to illustrate an absence of conflict by limiting the scope of the question presented to their view of the alleged specific facts of this case. If this short-sighted argument was, in fact, the method implemented by this Court to determine whether a matter was ripe for consideration, then there would rarely be resolution to conflicts between the circuits since almost all cases present differing factual circumstances.

Respondents state that "Petitioners attempt to create the appearance of a conflict among the circuits. . . " and "are forced to rely on mere dicta from these decisions to attempt to support their groundless assertion that a conflict exists." (Brief in Opposition, p. 1). However, it is

not only the Petitioners, but the courts themselves that acknowledge that a conflict actually exists.

In March, 2000, Judge Pallmeyer in the Northern District of Illinois spoke precisely to this issue:

> Federal Circuit Courts are split on the issue of whether Section 501 mandates fiduciary responsibility only with respect to the money and property of the acquired union or whether the statute adopts broader common law notions of acting at all times in the union's, rather than the leadership's, best interests.[2] While it has questioned whether *Gurton's* strict interpretation accurately reflects the intent behind the LMRDA, it has not yet followed other circuits in concluding that Section 501 embodies broad common law responsibilities. *Gee v. Textile Processors, Service Trades, Health Care, Professional and Technical Employees Int'l Union,* No. 99 C 3577, 2000 WL 336559, at *9 (internal citations omitted).

In *Trustees of the Operative Plasterers' and Cement Masons' Local Union Officers and Employees Pension Fund,* 794 F. 2d 1217 (7th Cir. 1986) the court also discussed the confusion concerning the scope of §501:

> The proper scope of section 501 is not an issue susceptible to easy judicial resolution. Indeed,

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[2]Compare Gurton v. Arons, 339 F.2d 371 (2d Cir. 1964) (applying narrow construction of Section 501 and holding that it imposes fiduciary duties only with respect to the union's own money and property) with Pignotti v. Local No. 3 Sheet Metal Workers' Int'l Ass'n, 477 F.2d 825 (8th Cir. 1973) (holding that the fiduciary duties of union officers under Section 501 extend beyond just the safeguarding of the union's own funds and property).

> from the very earliest days of the LMRDA, it has been recognized that the precise contours of section 501 are difficult to delineate. Definitive interpretation of such an ambiguous provision must be undertaken with great caution . . . 794 F.2d at 1219-20.
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> . . .
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> In attempting to delineate the contours of section 501, various circuits have taken approaches which are somewhat difficult to reconcile. For some, the breach of fiduciary duty proscribed by the section occurs only when that breach is grounded in an alleged misappropriation of money or property. Under this view, section 501 could not be used to attack the manner in which a union resolution was adopted. Other courts have taken a far more expansive view of the scope of section 501 and have viewed it as a weapon to correct abuses in the union's internal process of governance. 794 F.2d at 1220 (internal citations omitted).

Almost seven years later in *Operative Plasterers & Cement Masons Int'l Assoc. of the United States and Canada, AFL-CIO v. Benjamin,* 843 F.Supp. 1267 (N.D. Ind. 1993) the court again discussed the scope of §501, noting the same divisions existed between the circuits:

> The exact scope of the fiduciary duty imposed by §501 is a matter of some debate among the circuits. Some circuits have held that a breach of duty proscribed under §501 occurs only when that breach is grounded in an alleged misappropriation of money or property. Other courts have taken a more expansive view of §501 and

> have seen it as a weapon to correct abuses in the union's internal process of governance. 843 F.Supp. at 1272 (internal citations omitted).

In *Richardson v. National Post Office Mail Handlers,* 442 F.Supp. 193 (E.D. Va. 1977), the court acknowledged the split in authority among the circuits, stating, "[a]lthough the Fourth Circuit has not ruled on the scope of §501, those few circuits which have are not in harmony with one another." *Id.* at 194.

The Ninth Circuit recognized the divisions between the circuits in *Stelling v. IBEW Local 1547,* 587 F.2d 1379 (9th Cir. 1978), before it adopted the broader interpretation of the statute, stating:

> Most courts have taken the 'broad view' of §501 and interpreted it as establishing the fiduciary duties of labor organization officers in all their functions. However, a minority of courts have found that 501 was confined to controversies involving fiduciary responsibilities related only to the 'money and property' of the unions. *Id.* at 1386 (internal citations omitted).

Respondents did not answer or attempt to refute Argument II of the Petition as it related to the common ground of all the decisions of the circuits concerning §501. Official union business is always involved as is some action or inaction by a union official in his official capacity, which may be interpreted as violating §501.[3] This is the common theme in every case cited by the parties. However, in this case, Respondents did not allege that any union funds or property were misappropriated; that there was any improper action or inaction concerning official union business;

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[3]See page 8 of Petition for Writ of Certiorari.

or that any union official deprived any union member of anything. Respondents' only complaint was that some union officials, who also belonged to a social club not officially connected to the union, sold dance tickets and ads to contractors who employ Local 134 members. It is no wonder that Respondents did not address this argument in their Brief.

Respondents cite the case of *Gurton v. Arons,* 339 F.2d 371 (2d Cir. 1964), stating: "[t]he plaintiffs in *Gurton* did not charge their union officers with soliciting and accepting money from companies that employ union members." (Brief in Opposition, p. 8-9). While it is true that *Gurton* did not have the same factual scenario as the present case, it was a case brought against union officials for the manner in which they conducted a union election. The relevance of the case lies in the court's examination of whether such conduct falls within the scope of §501. The court stated:

> It is equally clear that Section 501 of the L.M.R.D.A. has no application to the present controversy. A simple reading of that section shows that it applies to fiduciary responsibility with respect to the money and property of the union and that it is not a catch-all provision under which union officials can be sued on any ground of misconduct with which the plaintiffs choose to charge them. 339 F.2d at 375.

Similarly, the other cases cited by Petitioners and criticized by Respondents also concern the breadth of §501. *Gurton v. Arons, 39F.2d 371* (2d Cir. 1964), *Coleman v. Brotherhood of Railway & Steamship Clerks,* 340 F.2d 206 (2d Cir. 1965), and *Yanity v. Benware,* 376 F.2d 197 (2d Cir. 1967) are similar in that the plaintiffs did not make any allegations concerning union money or prop-

erty. *Head v. Brotherhood of Railway, Airline, & Steamship Clerks,* 512 F.2d 398 (7th Cir. 1975) and *Morrisey v. Curran,* 650 F.2d 1267 (2d Cir. 1981) involved union funds, but not misappropriation of those funds. These cases concern the same issue as that in the instant case–namely, how far §501 should be extended so as to include what type of conduct? While the factual scenario in the present case may slightly differ, the overall issue remains the same.

Respondents then cite *Operative Plasters & Cement Masons v. Benjamin,* 843 F.Supp. 1267, 1272 (N.D. Ind. 1993) and the statement that "Seventh Circuit precedent confirms that this [Court] has expressly declined to describe, except in the most tentative and fact specific way, the contours of §501." The court in *Trustees of Operative Plasterers v. Journeymen Plasterers,* 794 F.2d 1217 (7th Cir. 1985) stated "[t]he proper scope of section 501 is not an issue susceptible to easy judicial resolution." These quotes illustrate Petitioners' position that the statute itself is unclear and the circuit decisions concerning this statute are equally unenlightening, and perfectly illustrate why this case should be accepted by this Court.

III. The Seventh Circuit Erred in Expanding the Scope of §501

Contrary to Respondents' assertions, the Seventh Circuit expanded its application of §501 to encompass conduct not previously included by it, or any other circuit. Respondents failed to claim that Petitioners misused union funds or property, or make any allegations concerning official action taken by a union representative involving union governance. There are no cases where any court has ever applied §501 to circumstances that did not

concern union business, union money, member business or member monies or benefits, until the Seventh Circuit summarily concluded that selling tickets and ads to a Valentine's Day dance constituted a violation of §501. Not only did the Seventh Circuit expand the scope of §501, it did so with no explanation.

There is no support for Respondents' assertions that Section 501 "sets out three distinctly enforceable duties for union officers." (Brief in Opposition, p. 14). Similarly, they provide no support for their argument that §501 should be expanded to include union members selling tickets to a Valentine's Day dance sponsored by a social club, which was not a union event or in any way official union acts.

That §501 applies only to charges of misuse of union money and property finds support in the express language of the provision which prohibits a union officer from dealing with the labor organization "as an adverse party or on behalf of an adverse party in any matter connected with his duties." Further, that the essence §501 relates to transactions involving union money and property, conducted by union officials on behalf of the union, is demonstrated by the fact that the provision requires an official specifically to account for "profit received by him in whatever capacity in connection with transactions conducted by him or under his discretion on behalf of the organization."

The import of the language of §501 is clear: union officials are fiduciaries with respect to transactions conducted on behalf of the union. As fiduciaries, union officials are prohibited from profiting personally in the

transactions they conduct on behalf of the organization. As the court in *Gurton* stated:

> The provisions of the L.M.R.D.A. were not intended by Congress to constitute an invitation to the courts to intervene at will in the internal affairs of unions... The internal operations of unions are to be left to the officials chosen by the members to manage those operations except in the very limited instances expressly provided by the Act... Most unions are honestly and efficiently administered and are much more likely to continue to be so if they are free from officious intermeddling by the courts. General supervision of unions by the courts would not contribute to the betterment of the unions or their members or to the cause of labor-management relations. 339 F.2d at 375.

Certainly, if the courts frown upon judicial involvement in the internal operation of unions, there should be even greater reluctance to oversee the social activities of members of a union that have only mutual membership as the nexus between them. The social clubs of Local 134 are not officially endorsed, sponsored or recognized by the I.B.E.W. or Local 134. There are no ties between the fund-raising and social activities of the social clubs and the internal operation of the union. The social clubs operate as not-for-profit, social and welfare organizations raising money for charity, for social events for the club and for donation to various political organizations. There are no provisions in the Constitution of the International Union or the by-laws of Local 134 that recognize or provide for the social clubs. The social clubs are simply separate and apart from the internal operation of the union, as are its officers and members.

Finally, in view of the myriad of remedies available to discontented union members who wish to challenge perceived wrongs suffered at the hands of union officials, an expanded application of §501 serves no useful purpose. (See Petition for Writ of Certiorari, pp. 7-8). In view of the plethora of alternate remedies available, a broad application of §501 is not only unwarranted by the language of the provision, and the case law, but completely unnecessary as well. Judicial economy dictates that disgruntled union members should not be allowed to fight internal union political disputes in a federal forum using a law designed for other purposes.

CONCLUSION

In order to provide an orderly process whereby union officials can govern; dissatisfied union members can question; the Secretary of Labor can enforce; and the courts can adjudicate, there must be one set of rules and direction as to what constitutes a violation of §501.

The Seventh Circuit's summary conclusion is not supported by any other circuit or this Court. The circuit decisions are in conflict and do not give guidance to union officials and members throughout the United States–only confusion as to the scope of §501.

The Petitioners respectfully request the Supreme Court exercise its jurisdiction and grant the Petition for Writ of Certiorari.